

MEMORANDUM

May 2, 1990

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Trickle for
follow-up
one-month
CWS
5/7*

TO: Edmond F. Rovner
Special Assistant to the County Executive

VIA: Clyde H. Sorrell
County Attorney

FROM: Alan M. Wright
Senior Assistant County Attorney

RE: Regulation of Unwanted Newspaper Deliveries

As I discussed with you on April 25, 1990, we have received several complaints via both the County Executive's Office and the County Council about unsolicited and unwanted publications which are deposited on the private property of residents. Judging from the experience of the complainants, it is impossible to get the distributors of these publications to cancel delivery to any specific address.

Our current law (Chapter 48, Montgomery County Code) prohibits the deposit of solid waste on private property. The definition of "solid waste" does not clearly include newspapers and other publications. Furthermore, a blanket prohibition on the deposit of publications on private property would interfere with freedom of the press and speech. However, there may be room for legislation to deal with this problem which does not interfere with these freedoms.

An example of a legislative approach to this problem is that adopted by Burbank, Illinois described in the attached excerpt from the May-June 1989 issue of Municipal Ordinance Review. Their ordinance contains several restrictions, including requiring materials to be delivered to within five feet of the front door of any premises and allowing residents to post their premises against unsolicited material and notify deliverers not to deliver a particular publication to that address. I have requested further information on this ordinance through Municipal Ordinance Review.

Since this issue involves policy decisions I suggest we examine the options further before giving a final answer to our current citizen inquiries. I have attached some background materials. I am available to discuss this matter further with you at your convenience.

AMW:ban
1011.AMW

cc: Lewis T. Roberts, Chief Administrative Officer
T. Graham, Director, DEP

Attachment

executing notice of termination of a domestic partnership and the consequences of failure to give such notice are outlined. The ordinance also declares that domestic partners must be allowed to visit one another and members of their immediate families when confined to health care facilities that restrict visitors. (5-22-89)

FIREARMS -- SALE AND POSSESSION OF ASSAULT WEAPONS: After finding that the proliferation of assault weapons poses a serious threat to the citizens, that any civilian application of such weapons is incidental to their military anti-personnel purpose, that the recreational use of assault weapons is far outweighed by their potential threat of injury and death to human beings, and that these weapons are not subject to state regulations requiring a waiting period for their purchase, the City of Stockton, California has established regulations restricting the sale and possession of assault weapons. An "assault weapon" is defined as: (1) any semiautomatic center fire rifle capable of accepting a detachable magazine with a capacity of 20 rounds or more and originally designed for military or anti-personnel purposes; (2) any semiautomatic shotgun with a magazine capacity of over six rounds; (3) any semiautomatic pistol that is a modification of the rifle described in (1); (4) any firearm that can be restored to an operable assault weapon; (5) any part, or combination of parts, designed to convert a firearm into an assault weapon, or any combination of parts from which an assault weapon could be assembled if those parts were in the possession and control of one person. The ordinance declares that anyone who sells or possesses any assault weapon within the city is guilty of a misdemeanor. Any assault weapon used as a basis for an arrest will be seized as contraband and destroyed. All members of governmental law enforcement agencies who possess agency-approved assault weapons for use in the course and scope of their official duties are exempt from the provisions of the ordinance. The ordinance also provides that any person in possession of a prohibited assault weapon after the effective date of the ordinance will be given a grace period of seven days from the effective date to remove the weapon from within the city limits. (2-6-89)

MOTOR VEHICLES -- RECREATIONAL VEHICLES: In order to regulate the use of recreational motor vehicles and prevent public nuisances, the City of Minnetonka, Minnesota has passed a recreational motor vehicle ordinance. The ordinance defines a recreational motor vehicle (RMV) as any self-propelled vehicle used for recreational purposes, including trail bikes, all-terrain vehicles and hover-craft. Under the ordinance no one may: enter or operate an RMV on someone else's property without permission; operate an RMV carelessly; operate an RMV in excess of 25 miles per hour on public land; operate an RMV within 150 yards of public recreation areas or any gathering of people; post, alter, mutilate or remove any notice or sign on another person's property relating to RMVs; use an RMV to enter, leave or pass through a gate on someone else's property without returning the gate to its original position; use an RMV to leave another person's property after cutting a wire or destroying a fence to provide a means of egress. The ordinance also requires each RMV to be equipped with a proper muffler, adequate brakes, and lamps conforming to minimum standards. The Minnetonka City Council has been empowered to dedicate public areas for RMV use; any other RMV use of public land is declared to be unlawful. (11-7-88)

OFFENSES -- HANDBILL LITTERING: Burbank, Illinois has adopted an ordinance that prohibits handbill littering. The ordinance declares it unlawful to place material without postage affixed to it in or on mail receptacles. "Litter" is defined as any material delivered: anywhere other than within five feet of the front door to any premises; on a lawn or landscaped area if there is a paved area within five feet of the front door to the premises; anywhere there is a red "No Unsolicited Material" sticker posted within two feet of the front door to the premises; anywhere the occupant of the premises has previously given written notice to the publisher or deliverer not to deliver such materials to those premises. "Deliver" is defined as placing, throwing, putting, depositing or taking any action that results in an item being moved to a certain place. "Material" is defined as any newspaper, advertising material, paper, brochure or other product. Not only the person but

the company employing that person and the publisher of the material delivered are liable for any violations of the ordinance. Violators are subject to a fine of no less than \$10 and no more than \$1,000 for each separate offense. (5-10-89)

PUBLIC RECORDS -- MAINTENANCE AND STORAGE: Virginia Beach, Virginia has adopted an ordinance providing a system of records management for the city's offices and departments. All city records are declared to be public property and any custodian of those records is required to deliver them to his successor or the city records manager upon the expiration of the custodian's tenure in office. Minutes of the city council meetings are required to be microfilmed and the master copy of the microfilmed minutes will be sent to the Virginia State Library for storage. The ordinance mandates that the city manager develop a records management program providing for the creation, distribution, maintenance, use, preservation and disposition of city records. Department heads are required to cooperate with the city manager in implementing the records program. Each department head will designate an employee of the department as the department records officer. The records officer is responsible for coordinating the records management program in his department, for cooperating with the records manager in ensuring compliance with the overall records program and for monitoring compliance with the records retention and disposal schedules of his department. The ordinance also declares that any records that have been made confidential by law will be treated as confidential. (11-21-88)

STREETS AND SIDEWALKS -- MOTOR VEHICLE WINDOW WASHERS: After finding that there has been an increasing number of window washers who approach motor vehicles stopped for traffic and that many motorists become frightened when strangers approach their vehicles, the Board of County Commissioners of Dade County, Florida has made it unlawful to wash automobile windows in this manner. The ordinance declares it unlawful to approach an automobile waiting at a traffic light or intersection and either request permission to clean, service or repair any part of the vehicle or to actually clean,

service or repair any part of the vehicle. Violators of the ordinance are subject to a fine not to exceed \$500 and to imprisonment not to exceed sixty days. (3-23-89)

STREETS AND SIDEWALKS -- PERMITS REQUIRED FOR SPECIAL EVENTS: The City of Redmond, Washington, has passed an ordinance requiring a permit for any special event affecting the use of the city streets and sidewalks. All fairs, festivals, foot races, bicycle races and block parties are specifically included in the definition of "special event." The ordinance requires that a permit be obtained for every special event, provides for permit applications and fees and outlines standards regarding the denial of permits. All special event permit applications are sent to affected municipal departments for estimates of the cost of departmental activity necessitated by each event. (10-25-88)

WATERWAYS -- OPERATION OF BOATS: Winneconne, Wisconsin has passed an ordinance regulating the operation of boats on all waterways within the corporate limits of the village. It is declared unlawful to operate a motorboat without a muffler in use, with the cut-out open on the motor or with any unusual noise that tends to cause a public disturbance. Such noise restrictions do not apply to races duly authorized by the village board. The ordinance defines "slow-no wake" as the speed at which a boat moves as slowly as possible while maintaining steerage control. Motorboats are restricted to speeds: (1) no greater than that which is reasonable with regard to any actual and potential hazards and the exercise of due care; (2) no greater than the speed limit posted; (3) not in excess of "slow-no wake" in any area designated by "slow-no wake" buoys; (4) not in excess of "slow-no wake" in any channel located in a populated residential district. The ordinance prohibits the negligent operation of watercraft and adopts the Wisconsin Statutes that regulate boating. Violators are subject to a fine of not less than \$20 nor more than \$300 plus the costs of prosecution for the first offense within a year and a fine of not less than \$50 nor more than \$300 plus prosecution costs for the second offense within a year. (7-21-88)

MEMORANDUM

February 23, 1989

TO: Linda Alford
Aide to Councilmember Neil Potter

FROM: Alan M. Wright *AMW*
Senior Assistant County Attorney

Re: Newspapers as Solid Waste

In response to your memorandum of January 17, 1989 I have reviewed the provisions of Chapter 48 of the Montgomery County Code to determine whether unsolicited free newspapers deposited on the private property of homeowners or adjacent rights of way violates Section 48-11.

The definition of "solid waste" found in Section 48-1 is broad but does not specifically include newspapers or other forms of written communication deposited on private property. The definition reads as follows:

Solid waste: All waste material and debris, including but not limited to the following: Garbage, sludge, medical/pathological wastes, debris from building construction, ashes, junk, industrial waste, dead animals, salvable waste, dead or felled trees, uprooted tree stumps, slash, tree limbs, bushes, plants, leaves, grass, garden trimmings, street refuse, abandoned vehicles, machinery, bottles, cans, waste paper, cardboard, sawdust and slash from sawmill operations, and all other waste materials. It shall also include automobiles and trucks, boxes, containers, tires, appliances, furniture and recreational equipment any and all of which is in a state of disrepair or disfunction, except where such items are awaiting removal or are in the process of being repaired or renovated for the personal use of the owner or occupant; provided that repair, renovation or removal shall be accomplished within thirty (30) days.

Linda Alford
February 23, 1989
Page 2

The above definition is obviously intended to include all matter of "waste" materials. It is somewhat ambiguous as to whether a newspaper falls into this category, since it would obviously be considered waste by some but not, at least initially, by others.

Section 48-11 makes it unlawful to deposit solid waste upon the land or property of another. In enforcing this section the county is held to a criminal burden of proof. Statutes which provide for criminal penalties, as this one does, must give adequate notice to those charged of the activity which is proscribed. Connally v. Geneva/Const. Co., 269 U.S. 385, 46 S. Ct. 126 (1926). It is not clear that the provisions of Sections 48-1 and 48-11 were intended to apply to newspapers, even though the resident may not want them delivered to his property.

As additional support for his position, a defendant no doubt would argue that this application of the statute infringes upon freedom of speech and that any doubt should be resolved against an interpretation which would infringe on this constitutional right. In this regard, the newspaper issue also raises questions concerning other handbills, including political pamphlets, and the extent to which they might also be considered solid waste.

Based on the above considerations it seems to me the safer way to resolve this issue would be for the Council to consider an amendment to the definition of "solid waste" so that the intent with regard to newspapers would be clear. This would also give the newspapers and others the opportunity to be heard and perhaps to craft some special provisions regarding newspapers that would meet some of their objections.

If you have any questions concerning this memorandum, please feel free to discuss it with me further.

AMW:ban
3187:89.00628



Montgomery County Government

OFFICE OF THE COUNTY ATTORNEY
Executive Office Building
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850-2589

TELEPHONE
Area Code 301
217-2600

September 25, 1989

Joan A. Estrada
Professional Carpet Service
4608 North Park Avenue
Chevy Chase, Maryland 20815-4596

Re: Newspaper Deliveries

Dear Ms. Estrada:

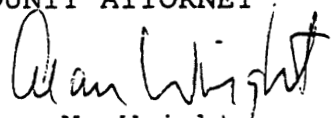
I am writing to advise you of the position of this office with regard to enforcement action against deliverers of unsolicited and unwanted free newspapers.

In January of this year we received a request from Council member Neil Potter's office, which I believe was in response to your inquiry, for advice as to whether the deposit of these newspapers on private property constitutes a violation of §48-11 of the Montgomery County Code prohibiting deposit of solid waste on the property of another. In our response we reviewed the definition of "solid waste" found in §48-1 of the County Code and advised that newspapers, even unsolicited and unwanted newspapers, did not clearly fall within the definition of "solid waste". That being the case, we concluded that the prosecution of newspaper deliverers, in which the County is held to a criminal burden of proof, would be open to objection for failure of the statute to give adequate notice of the activity which is made illegal. The issue is further complicated by questions of free speech under the United States Constitution.

Based on the above considerations it is our opinion that the newspaper issue should be resolved by a clarifying amendment to the County Code. In the absence of such clarification it is our opinion that, although newspapers are not clearly excluded from the definition of solid waste, prosecution of newspaper deliverers under §48-11 is subject to serious objections.

Sincerely,

CLYDE H. SORRELL
COUNTY ATTORNEY


Alan M. Wright
Senior Assistant County Attorney

AMW:ban
0504.AMW

1075-0

CE

Manufacturing
Sourcing
Marketing
Investment

WILLIAM N. STOKES
Certified Management Consultant

Pacific Basin
Middle East
Africa

REC'D COUNTY EXEC APR 6 1990

April 4, 1990

Mr. Sidney Kramer,
County Executive,
Montgomery County,
Rockville, Md.

Dear Mr. Kramer:

I ask you to consider and develop regulations which would deter or reduce the present practice of random deposit of published materials on residential properties in the County. Now residents find on their lawns every week three plastic bags containing copies of the Bethesda Gazette, Potomac, and another paper, which we have not ordered. Many are ignored, and end up in the streets or gutters.

This is not merely a nuisance; there are three harmful effects:

- 1) Security. We can stop mail and paid newspaper subscriptions while we are away to avoid giving notice to burglars, but we are unable to stop these unwanted advertisements of our absence.
- 2) Pollution. The plastic bags and the contents add up to a drain on the County landfill and a hazard to the sewer system.
- 3) Appearance. They are a widespread detraction from your excellent campaign to "Keep Montgomery County Beautiful."

I would not object to the distribution of unsolicited advertising material or opinion material through postal channels ~~and is subject to~~ such controlled delivery, where it can be stopped if desired. I do object to the random deposit of unwanted items on the ground.

A reasonable solution would require a resident's consent before ^{unwanted,} unmailed deliveries, such as acceptance of a "free subscription."

I look forward to hearing your comments.

Sincerely,

William N. Stokes
William N. Stokes

PS - Distributors, by avoiding costs of discriminating delivery, are transferring those costs to the County's trash disposal budget.

REC'D COUNTY EXEC. APR 24 1990

CE

1242-0

RONALD DOBRYDNIOW
2246 FAIRLAND ROAD
SILVER SPRING, MARYLAND 20904

April 23, 1990

Hon. Sidney Kramer, County Executive
Montgomery County Government,
Rockville, Md. 20850

Dear Mr. Kramer:

Can anything be done to prohibit the distribution of several free "publications" which are thrown on my driveway, and also that of my neighbors, each week? These rags are unsolicited and unwanted at least by me. One is called "Free Press" and the other "Silver Spring Record." They have the appearance of newspapers but are in reality advertising flyers. At best they are a nuisance since all I do is pick them up and toss them into my garbage - at worst they are, in fact, no different than ordinary litter when the household does not pick them up from the roadway. I walk along Fairland Road practically every day and I see the same publications lying all along it for weeks on end.

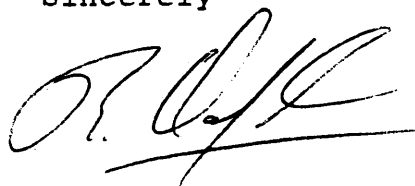
My view is that it makes little sense to have anti-littering ordinances while at the same time allowing the free distribution of such material. They are also wrapped in plastic which presumably complicates the waste disposal problem of the County. On several occasions I have seen the trucks which distribute them; they go along at a good clip merrily tossing out these items onto each driveway. If citizens have a right to privacy and there are laws against littering how is it that these firms are allowed to operate as they do? I have called the publishers several times and told them I do not wish them to toss their publications on my property but to no avail - they apparently simply ignore such pleas. Freedom of the press is not involved here - the littering laws are being violated as far as I can see under the guise of a twisted interpretation of the Constitution.

Prohibition of the distribution of unsolicited advertising material no matter what its appearance should be a high priority of the County. It will reduce the size of the waste disposal problem and eliminate one more annoyance of modern life. Please do something - and soon!

Thanking you for your prompt attention to

this matter, I remain

Sincerely

A handwritten signature in black ink, appearing to be "O. R. [unclear]", written over a horizontal line.